

AMENDATORY SECTION

WAC 390-37-136 Production of documents and use at hearing and other hearing procedures (adjudicative proceedings). (1) Upon request by either the agency or its legal representative, or the party against whom the enforcement action is being taken or his/her representative, copies of all materials to be presented at the adjudicative proceeding shall be provided to the requester within seven calendar days of the request but, for good cause shown, not less than three business days prior to the date of the hearing. Unless a prehearing order states otherwise, the provisions of this rule apply to evidence and written argument (legal briefs) filed and served in hearings (adjudicative proceedings). Parties or the executive director may request a prehearing conference if provisions of this rule need to be adjusted or if the provisions are not adhered to by the parties.

(2) (a) When exhibits of a documentary character are to be offered into evidence is to be offered at the adjudicative proceeding or when briefs are to be submitted at the adjudicative proceeding, the party offering the evidence exhibit or brief shall file provide a minimum of ten copies, a copy of proposed exhibits, exhibit lists, witness lists, and briefs with the commission via an email to the executive director or his or her designee by the date and time designated by the executive director or designee, which is typically by 1:00 p.m. Pacific Time at least seven calendar days prior to the hearing. The email shall provide the name of the party submitting the documents, the total number of pages, the software used to prepare the document, and the name, address, telephone number and email address of the person sending the email message.

(b) In the event electronic submission is not readily available to a pro se respondent or the evidence is not suited to email transmission, other means of providing these materials to the commission may be approved by the chair or the executive director, or their designees if requested in advance of the date and time in (2)(a).

(c) On the day the parties provide these materials electronically to the commission, they shall also mail or otherwise deliver a paper (or hard copy) set of the materials to the commission.

(d) The parties shall confirm in advance with the executive director that any documents provided electronically are able to be accessed by software available at the agency. If they are not accessible, the executive director shall direct how the documents are to be submitted.

(e) The documents are considered filed when received during actual business hours at the commission office. If received after actual business hours, they will be deemed filed the next business day.

(f) The parties shall exchange (serve) copies of the proposed exhibits, exhibit lists, briefs and witness lists with each other by the same date designated by the executive director for submission to the commission. The parties are encouraged to exchange these documents electronically, by email or compact disk. The parties are encouraged to discuss with each other the proposed exhibits and witnesses in advance of filing the documents with the commission, to determine if there are any objections to the evidence and if any agreements or stipulations can be reached on their submission.

~~(3) If documentary evidence has not been exchanged prior to the hearing under subsection (1) of this section, the parties shall arrive at the hearing location in sufficient time before the time scheduled for the adjudicative proceeding for the purpose of exchanging copies of exhibits to be introduced. Respondent's exhibits shall be numbered R-1, R-2, etc. Commission staff exhibits shall be numbered S-1, S-2, etc. Jointly submitted exhibits shall be numbered J-1, J-2, etc. If an exhibit is not jointly submitted but there is no objection to it by the responding party, the party offering the exhibit shall designate agreed-to exhibits on the party's exhibit list.~~

(4) Briefs shall contain the name of the Respondent in the caption and the cause number. Briefs shall be no more than 25 pages, double spaced, excluding attachments or exhibits.

(5) The parties shall inform the executive director of any special equipment necessary for the adjudicative proceeding at the time documents are filed.